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Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya

Note verbale dated 21 May 2012 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Luxembourg to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya and, in accordance with paragraph 25 of that resolution, has the honour to transmit herewith information on the implementation by Luxembourg of the United Nations sanctions imposed upon Libya (see annex).

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Annex to the note verbale dated 21 May 2012 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chair of the Committee

Report of Luxembourg to the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya

In accordance with paragraph 25 of Security Council resolution 1970 (2011), Luxembourg has the honour to provide the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya with the following information on the specific measures that it has taken to implement effectively the restrictive measures set out in paragraphs 9, 10, 15 and 17 of resolution 1970 (2011) and supplemented by Security Council resolution 1973 (2011).

Measures taken by the European Union

Under European Union law, Security Council resolutions are implemented by decisions of the Council of the European Union in the area of the Common Foreign and Security Policy.

These decisions are legally binding on member States and transpose the content of Security Council resolutions into European Union law. In order to make their content not only binding on member States, but also directly applicable within them, the decisions need to be incorporated into European Council regulations. In application of these principles, Luxembourg and the other member States of the European Union have jointly implemented the restrictive measures against Libya imposed by Security Council resolutions 1970 (2011) and 1973 (2011) as follows:

Decision 2011/137/CFSP of 28 February 2011, as amended by Decision 2011/178/CFSP of 23 March 2011, Decision 2011/625/CFSP of 22 September 2011, Decision 2011/729/CFSP of 10 November 2011 and Decision 2011/867/CFSP of 20 December 2011

These Council decisions reflect the European Union's commitment to implement all of the measures set out in Security Council resolutions 1970 (2011) and 1973 (2011). Decision 2011/137/CFSP establishes a ban on arms and on equipment which might be used for internal repression, restrictions on entry to the territory and a freeze on the funds and economic resources of certain persons and entities who commit serious human rights abuses against persons in Libya, including by planning, commanding, ordering or conducting attacks, in violation of international law, on civilian populations and facilities. Decision 2011/178/CFSP establishes other restrictive measures, including the prohibition of flights over Libyan airspace and of flights over European Union airspace by Libyan aircraft and other provisions relating to the measures introduced by Decision 2011/137/CFSP concerning restrictive measures arising from the situation in Libya, including a provision designed to ensure that these measures have no impact on humanitarian operations in Libya.

These decisions were modified by the following Council implementing decisions:

- **Council Implementing Decision 2011/236/CFSP of 12 April 2011**, which replaced the annexes to Decision 2011/137/CFSP with new language, introduced in annexes I, II, III and IV to this decision, including additional persons and entities in the list and removing a person
- **Council Implementing Decision 2011/300/CFSP of 23 May 2011**, annexes I and II of which included an additional person and an additional entity in the list set out in annexes II and IV to Decision 2011/137/CFSP
- **Council Implementing Decision 2011/345/CFSP of 16 June 2011**, which removed a person from the list set out in annex IV to Decision 2011/137/CFSP
- **Council Implementing Decision 2011/500/CFSP of 10 August 2011**, which included two entities in the list set out in annex IV to Decision 2011/137/CFSP
- **Council Implementing Decision 2011/521/CFSP of 1 September 2011**, which deleted entities from the list set out in annex IV to Decision 2011/137/CFSP
- **Council Implementing Decision 2011/543/CFSP of 5 September 2011**, which deleted an entity from the list set out in annex IV to Decision 2011/137/CFSP.

These implementing decisions sought in particular to implement, for the entire European Union, the measures established in paragraphs 14 to 17 and paragraph 19 of Security Council resolution 2009 (2011) concerning the progressive lifting of the asset freeze under the conditions established by the Security Council so that the assets could be made available to the people of Libya and used for their benefit.

Regulations of the Council of the European Union

Council regulations implement the elements of the above decisions which fall within the competence of the European Union under the Treaty on the Functioning of the European Union, in particular with a view to ensuring their uniform application by economic operators in all member States.

Council regulations are binding in their entirety and are directly applicable in all States members of the European Union as soon as they have been published in the *Official Journal of the European Union*. Funds and economic resources are frozen directly and immediately by the Council regulations. No further national implementation is necessary in this respect.

Council Regulation (EC) No. 204/2011 of 2 March 2011, as amended and implemented by subsequent regulations, the most recent of which is Council Regulation (EC) No. 1360/2011 of 20 December 2011

These regulations have been supplemented by the following implementing regulations:

- **Council Implementing Regulation (EU) No. 233/2011 of 10 March 2011**, which implemented article 16, paragraph 2, of Council Regulation (EU) No. 204/2011 by including additional persons and entities in the list of persons

and entities subject to restrictive measures set out in annex III to that Regulation

- **Council Implementing Regulation (EU) No. 272/2011 of 21 March 2011**, which implemented article 16, paragraph 2, of Council Regulation (EU) No. 204/2011 by including additional persons and entities in the list of persons and entities subject to restrictive measures set out in annex III to that Regulation
- **Council Implementing Regulation (EU) No. 288/2011 of 23 March 2011**, which implemented article 16, paragraph 2, of Council Regulation (EU) No. 204/2011 by replacing annexes II and III of that Regulation with new language, introduced in annexes I and II to this regulation, respectively, including an additional person and an additional entity in the list
- **Council Implementing Regulation (EU) No. 360/2011 of 12 April 2011**, which implemented article 16, paragraphs 1 and 2, of Council Regulation (EU) No. 204/2011 by replacing annexes II and III of that Regulation with new language, introduced in annexes I and II to this regulation, respectively, including additional persons and entities in the list and removing a person
- **Council Implementing Regulation (EU) No. 502/2011 of 23 May 2011**, which implemented Council Regulation (EU) No. 204/2011 by adding a person and an entity to the list set out in annex III to that Regulation
- **Council Implementing Regulation (EU) No. 573/2011 of 16 June 2011**, which implemented article 16, paragraph 2, of Council Regulation (EU) No. 204/2011 and deleted a person from the list set out in annex III to that Regulation
- **Council Implementing Regulation (EU) No. 804/2011 of 10 August 2011**, which implemented article 16, paragraph 2, of Council Regulation (EU) No. 204/2011 and added additional entities to the list set out in annex III to that Regulation
- **Council Implementing Regulation (EU) No. 872/2011 of 1 September 2011**, which implemented article 16, paragraph 2, of Council Regulation (EU) No. 204/2011 and deleted the entities set out in the annex to this regulation from the list set out in annex III to that Regulation
- **Council Implementing Regulation (EU) No. 925/2011 of 15 September 2011**, which implemented article 16, paragraph 2, of Council Regulation (EU) No. 204/2011 and deleted an entity from the list set out in annex III to that Regulation
- **Council Implementing Regulation (EU) No. 941/2011 of 22 September 2011**, which implemented article 16, paragraphs 2 and 5, of Council Regulation (EU) No. 204/2011 and deleted the entities set out in the annex to this regulation from the list set out in annexes II and III to that Regulation

Council Regulation (EC) No. 539/2001 of 15 March 2011 (and the amendments thereto), which requires Libyan nationals to be in possession of a visa in order to enter the European Union.

II. Measures taken by Luxembourg

Arms embargo

In accordance with article 5 of the amended Act of 15 March 1983 on arms and ammunition, the import, manufacture, transformation, repair, acquisition, purchase, possession, stockpiling, transport, transfer, sale, export and trade of arms and ammunition are subject to authorization of the Minister of Justice. Furthermore, in accordance with the amended Act of 5 August 1963 regulating the import, export and transit of goods and related technology and with the Grand Ducal Regulation of 31 October 1995 related to the import, export, and transit of arms, ammunition and material that serves especially for military use, and related technology, an export licence is mandatory for the sale, supply, transfer or export of arms and related material. This applies to all items on the Common Military List of the European Union. Licence applications are examined, using the relevant criteria, in light of the measures imposed by paragraphs 9 and 10 of resolution 1970 (2011) and the exceptions set out in paragraph 13 of resolution 2009 (2011). Where applicable, Luxembourg will ensure that notification is given to the Committee prior to any shipment of arms or related materiel. To date, no such shipments have been made from Luxembourg.

Denial of visa applications

Denials of visa applications are governed primarily by the Convention implementing the Schengen Agreement; it regulates the entry of third-country nationals into the Schengen area, of which Luxembourg is a part. Article 5, paragraph 1, of the Convention sets out the conditions for entry into the territories of the Contracting Parties. Paragraph 2 of that article states that an alien who does not fulfil all of those conditions must be refused entry into the territories of the Contracting Parties. Since the individuals concerned by measures ordered by the Security Council do not meet the conditions set out in article 5, paragraph 1 (e), of the Convention, which states that the alien must not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties, these individuals may not be granted entry into the territory of Luxembourg. Pursuant to articles 15 and 18 of the Convention, this prohibition of entry into the territory applies both to uniform short-stay visas valid for the entire territory of the Contracting Parties and to national long-stay visas. Furthermore, the Act of 29 August 2008 on the free movement of persons and immigration provides that individuals who are not allowed into Luxembourg shall be sent back.

Assets freeze

Luxembourg's legislation on the financial sector establishes professional obligations and codes of conduct that must be observed at all times and in an ongoing manner by financial institutions. They must therefore exercise customer due diligence and must cooperate with the authorities, particularly the Financial Sector Monitoring Committee (CSSF). Before establishing any business relationship or conducting any transaction, institutions must verify the identity of the customer or beneficial owner. Then, throughout the relationship with the client, they must monitor transactions, including with respect to the source of funds. Any measures or international sanctions adopted at the political level by the Security Council are introduced into Luxembourg through European Union regulations that are directly

applicable under domestic law. In the event that a customer of a financial institution is targeted by an international sanction, the institution must apply the sanction by freezing the customer's assets without delay and notifying the Ministry of Finance. In Luxembourg, assets belonging to the Libyan Investment Authority have been frozen.

Ban on flights

Civilian flights are the concern of the Directorate of Civil Aviation. There are currently no flights between Libya and Luxembourg. Authorizations for military flights are requested from the Defence Directorate through the Ministry for Foreign Affairs. The Defence Directorate has implemented the applicable restrictive measures.